COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 468 OF 2001 (M/S)
OLD NO. 11133 OF 1994

State of U.P. through
Collector, Dehradun … **Petitioner.**

Versus

District Judge, Dehradun
and another. … **Respondents.**

Date 05-10-2004

Hon'ble B.S. Verma, J.

By means of the present Writ Petition, the petitioner State has challenged the order, dated 18-8-1993, passed in U.L.Ceiling Appeal No. 165 of 1988, by the District Judge, Dehradun, whereby the learned District Judge has allowed the appeal of respondent no.2, Singha Charitable Trust and set aside the order of the Competent Authority Dehradun dated 30-11-1988, and has remanded the case to the Competent Authority with a direction to decide the objections of the appellant-respondent no.2 under Section 10(2) of the Urban Land (Ceiling and Regulation)Act, 1976 on merit.

Brief facts, giving rise to the petition, as unfolded from the record is that one Sri Rajendra Narain Tankha submitted statement of the properties held by him in pursuance of Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (***in short the Act*** **)** showing that the O.P. Rajendra Narain Tankhal possessed total area of 5950 Sq.Mt. at 60,Ansari Marg and this property belonged to Undivided Hindu Family. Survey of the property was conducted by the Competent Authority and it was found that there was total area to the tune of 5950 Sq.Mt. including covered area worth 1659 Sq.Mt. The land of O.P. in village Dhaka Patti is to the area of 1600 Sq.Mt. Accordingly notice under Section 8(3) of the Act along with draft statement to the opposite party Rajendra Narain. The O.P. filed

Objections denying the allegations made in the said notice. Ultimately, after hearing the learned counsel for the Opposite Party and considering the material on record, the Competent Authority vide order, dated 4-9-1978 has declared that the Opposite Party has held excess vacant land to the tune of 383.78 Sq.Mt. and has ordered to initiate proceedings under Section 9 of the Act. Aggrieved by the said order, the O.P. has come up in appeal before the District Judge Dehradun, which was registered as U.L. Ceiling Appeal No. 239 of 1978, Sri Rajendra Narain Tankha Vs. Competent Authority and another. Ultimately, the District Judge Dehradun, vide his judgment and order dated 17-07-1979 has allowed the appeal and held that the appellant does not possess any excess vacant land.

Dissatisfied with this order, the State has come up before the Allahabad High Court in Writ Petition No. 8386 of 1979. This Writ Petition was ultimately allowed vide order dated 18-10-1984 and the order dated 4.9.1978 of the Competent Authority was restored. After decision of the High Court of Allahabad, the Competent Authority issued notice to the Tenune Holder under Section 10(1) of the Act. At the time of taking over of possession of the land, the present respondent no.2, Singha Charitable Trust filed objection under Section 10(2) of the Act on 1.11.1988 alleging therein inter alia that they have purchased the land from said R.N.Tankha, therefore, they are interested parties in the case and that there is no excess vacant land in their possession. The objections filed by the respondent no.2 were rejected by the Competent Authority, vide its order dated 30.11.1988. Then, the respondent no.2 came up in appeal before the District Judge Dehradun, which was registered as U.L. Appeal No. 165 of 1988. Ultimately, the District Judge, Dehradun, vide his judgment and order dated 18.8.1993 has remanded the case to the Competent Authority, therefore, the State has come up in the present Writ Petition before this Court.

The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15

of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

> ***"4. Abatement of legal proceedings.- All proceedings relation to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate;***
>
> ***Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."***

As stated by the Standing Counsel, Sri Niranjan sah, no declaration has been published under Section 10(3) of the Principal Act, therefore, no question of vesting of the land in the State or taking over possession arises. The effect of the repealing Act on present case is what where for land in dispute, no declaration was published under Section 10(3) of the Act, there is no question of vesting the land in the State or taking over possession of it. The present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The facts of the case are squarely covered by the judgment of the Apex Court in the case of ***"Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (2000, AIR, SCW, 1882).***

In view of the above, the Writ Petition has become infructuous and is dismissed as infructuous.

(B.S. Verma, J.)

RCP